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Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime

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Consideration of the revised draft United Nations Convention against Transnational Organized Crime, with particular emphasis on articles 2, 2 *bis* (subparagraph (a) only), 4 *bis*, 9, 10, 10 *bis*, 14, 14 *bis*, 15 and 16

Proposals and contributions[2]

Addendum

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* A/AC.254/29.

[2] The present document includes, in addition to proposals to be considered by the Ad Hoc Committee at its ninth session, proposals to be considered at the informal consultations to be held during the ninth session.

II. Proposals and contributions

Canada

[Original: English]

Article 10: Extradition

Paragraph 2

1. Where the involvement of an organized criminal group is being considered solely for the purpose of determining if the Convention applies under this article, it need not be established as if it were an element of the offence. In that regard, when determining the issue, the requested State Party shall take into consideration the information contained in the warrant of the arrest or order having the same effect or in the conviction of the person whose extradition is required or in any additional statement of the facts provided by the requesting State Party.

2. The determination of the applicability of the Convention on the basis of the involvement of an organized criminal group may be reserved for the executive.

Italy*

[Original: English]

Article 14: Mutual legal assistance

1. Current paragraph 17 might be reformulated as follows:

> "17. A request shall be executed in accordance with the domestic law of the requested State and, to the extent not contrary to the fundamental principles of its domestic law, in accordance with the formalities and procedures specified in the request. The requested State shall execute the request for assistance as soon as possible and shall take as full account as possible of any deadlines set by the requesting State."

2. In paragraph 26, after the words "pursuant to paragraph 25", the following words should be added "or when a request cannot be executed in accordance with the formalities and procedures expressly indicated by the requesting State pursuant to paragraph 17 of this article."

Hearing by video conference

3. A separate article dealing with video conferencing should be considered, to read as follows:

"Article (...)
"Hearing by video conference

> "1. When a person who is present in the territory of a State Party has to be heard as a witness or an expert by the judicial authorities of another State Party and it is not possible or desirable for that person to appear before those authorities, the

* Amendments previously issued in document A/AC.254/L.154.

first State Party may, upon request of the other State, consent to the hearing to take place in its territory by video conference.

"2. In the implementation of paragraph 1 of this article, the following provisions shall apply, except where agreed otherwise on a case-by-case basis:

"(a) The hearing shall be conducted by a judicial authority of the requesting State in accordance with the domestic law of that State and shall be attended by a judicial authority of the requested State; the latter shall be responsible for the identification of the person to be heard and shall, on conclusion of the hearing, draw up minutes indicating the date and place of the hearing and any oaths taken; the hearing shall be conducted without any physical or mental pressure on the person questioned;

"(b) If the judicial authority of the requested State considers that during the hearing the fundamental principles of the law of that State are infringed, he or she has the authority to interrupt or, if possible, to take the necessary measures to continue the hearing in accordance with those principles;

"(c) The person to be heard and the judicial authority of the requested State shall be assisted by an interpreter as necessary;

"(d) The person to be heard may claim the right not to testify as provided for by the domestic law of the requested State or of the requesting State; the domestic law of the requested State applies to perjury.

"3. All costs of the video conference shall be borne by the requesting State, which may also provide as necessary for technical equipment.

"4. To the extent permitted by their domestic law, States Parties may agree to apply, *mutatis mutandis*, the provisions of this article to hearing of accused persons."

Article 14 bis: Joint investigations

4. Current article 14 *bis* on joint investigations might be slightly reworded to read:

"States Parties shall consider concluding bilateral or multilateral agreements or understandings whereby, in relation to matters that are the subject of criminal proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies on a reciprocal basis. In the absence of such agreements or understandings, such joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory the investigation is to take place is fully respected."

5. Article 19, paragraph 2 (c), should consequently be deleted.

Peru*

[Original: Spanish]

Article 4 bis: Measures to combat money-laundering

Paragraph 1

It is proposed to add the following text at the end of subparagraph (a): ", which shall be understood to mean unusual transactions that, by reason of their amount, characteristics and frequency, are inconsistent with the customer's business activity, exceed the normally accepted parameters of the market or have no clear legal basis and could constitute or be connected with unlawful activities in general".

Spain**

[Original: English/French/Spanish]

Article 2 bis: Use of terms

1. The definition of "organized criminal group" in subparagraph (a) is of great importance for the draft United Nations Convention against Transnational Organized Crime and, therefore, it must be as clear and precise as possible.

2. According to subparagraph (a) of article 2 *bis*, the "organized criminal group" to which this Convention refers must, as the first requirement, be a "structured group". In subparagraph (c), "structured group" is defined as a group not formed fortuitously for the immediate commission of a crime. That means that in the definition of "organized criminal group" there have been two different successive events:

(a) The first, when the structured group was formed; and

(b) The second, when the crime was committed. Pursuant to subparagraph (a), the purpose of the crime must be that of obtaining financial or other benefit of a material nature.

As a result of the foregoing, the "organized criminal group", whatever the purpose for which it may have been formed, must necessarily have been formed prior to and independently of the type of crime that will be committed.

3. With a view to giving greater precision and clarity to this definition, the delegation of Spain proposes to include in subparagraph (a) the words ", whatever the purpose for which it may have been formed," after the words "a structured group". The amended subparagraph would thus read:

> "For the purposes of this Convention:
>
> "(a) 'Organized criminal group' shall mean a structured group, whatever the purpose for which it may have been formed, of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established pursuant to this Convention, in order to obtain, directly or indirectly, a financial or other material benefit;"

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* Amendment previously issued in document A/AC.254/L.177.

** Amendments previously issued in document A/AC.254/L.170.

Syrian Arab Republic

[Original: Arabic]

Article 19: Law enforcement cooperation

Paragraph 2

1. The words "the offences covered by this Convention" should be retained.

2. The brackets in subparagraph (a) should be removed.

3. Not applicable to English.

4. In subparagraph (d), the words "quantities of substances" should be replaced by the words "quantities of seized substances" in line with the purport of paragraph 1 (d) of article 9 of the 1988 Convention.

Paragraph 3

5. In subparagraph (b), the words "in order to maintain the confidentiality of information exchanged" should be inserted after the words "in accordance with their national law".

Paragraph 4

6. In subparagraph (a), the words ", within its means," should be inserted after the word "Designate".

Article 22: Prevention at the national level

Paragraph 5

7. This paragraph should be deleted.

Article 26: Signature, ratification, acceptance, approval, accession and reservations

Title

8. The words "and reservations" should be deleted.

Paragraph 1

9. The phrase "at the United Nations Office at Vienna" should be inserted after the words "all States for signature".

10. The time limit for signature in Vienna should be three months after the date of adoption of the Convention and the time limit for signature in New York should be one year after the date of adoption of the Convention.

Paragraphs 3, 4 and 5

11. These paragraphs should be included in a separate article entitled "Reservations", with the following amendments:

(a) Paragraph 4 should be deleted;

(b) The brackets in paragraphs 3 and 5 should be deleted.

Article 27: Entry into force

Paragraph 1

12. The words "the thirtieth" should be replaced with the words "the ninetieth", in line with article 29, paragraph 1, of the 1988 Convention.

13. In order to emphasize the international nature of the Convention, its entry into force should be determined as of the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession.

United States of America*

[Original: English]

Article 9: Jurisdiction

Paragraph 1

It is proposed to amend paragraph 1 to read as follows:

"1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in articles 3, 4, 4 *ter* and 17 *bis* of this Convention when:

"(a) The offence is committed within the territory of that State; or

"(b) The offence is committed on board a vessel that is flying the flag of that State or an aircraft that is registered under the laws of that State at the time the offence is committed, where, under the domestic laws of that State, such vessel or aircraft would be considered also to be within its territorial jurisdiction."

Recommendation of the informal working group on article 9, paragraph 2 (c)**

Article 9: Jurisdiction

Paragraph 2

It is proposed to amend subparagraph (c) to read as follows:

"(c) The offence is:

"(i) One of those established in article 3, paragraph 1, of this Convention and is committed outside its territory with a view to the commission of a serious crime within its territory;

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* Amendment previously issued in document A/AC.254/L.192.

** Amendment previously issued in document A/AC.254/L.184.

"[(ii) One of those established in article 4, paragraph 1 (d), of this Convention and is committed outside its territory with a view to the commission of an offence established in article 4, paragraph 1 (a), (b) or (c), of this Convention within its territory.]"